

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

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RICHARD BURKHART,	)	Cause No. CV 10-20-GF-SEH-RKS
	)	
Petitioner,	)	
	)	ORDER AND FINDINGS
vs.	)	AND RECOMMENDATIONS
	)	OF U.S. MAGISTRATE JUDGE
MIKE MAHONEY; ATTORNEY )		
GENERAL OF THE STATE OF )		
MONTANA,	)	
	)	
Respondents.	)	

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On April 1, 2010, Petitioner Richard Burkhart moved to proceed in forma pauperis with this action for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner is a state prisoner proceeding pro se.

**I. Motion to Proceed In Forma Pauperis**

After reviewing the motion and supporting account statement, Petitioner has sufficiently shown he cannot afford to pay all costs that may be associated with this action. The motion to proceed in forma pauperis

will be granted.

## II. Findings and Recommendations

Petitioner challenges a homicide conviction resulting in a life sentence. Pet. (doc. 1) at 2-3 ¶¶ 1-7. On December 23, 2004, the Montana Supreme Court affirmed his conviction and sentence. State v. Burkhart, 103 P.3d 1037 (Mont. 2004); Pet. at 3 ¶ 8. Public records show there was no petition for rehearing and no petition for writ of certiorari.

Petitioner had to file his federal petition on or before March 23, 2006. 28 U.S.C. § 2244(d)(1)(A); Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999). He filed on March 10, 2010. Pet. at 6 ¶ C. The petition is untimely by nearly four years and should be dismissed with prejudice.

A certificate of appealability should be denied because the law and the facts governing the disposition allow no room for debate. Slack v. McDaniel, 529 U.S. 473, 484 (2000); Lambright v. Stewart, 220 F.3d 1022, 1026 (9th Cir. 2000).

Based on the foregoing, the Court enters the following:

### ORDER

Petitioner's motion to proceed in forma pauperis (doc. 2) is GRANTED.

The Court also enters the following:

### **RECOMMENDATIONS**

1. The Petition (doc. 1) should be DISMISSED WITH PREJUDICE as time-barred.
2. The Clerk of Court should be directed to enter by separate document a judgment in favor of Respondents and against Petitioner.
3. A certificate of appealability should be DENIED.

### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may serve and file written objections to these Findings and Recommendations within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written

objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Petitioner must immediately inform the Court of any change in his mailing address.

DATED this 2nd day of April, 2010.

/s/ *Keith Strong*  
Keith Strong  
United States Magistrate Judge